

owed to other agencies before paying a debt owed to PBGC. PBGC will determine the order in which the debts will be collected based on the best interests of the United States.

**§ 4903.22 What does PBGC do upon receipt of a request to offset the salary of a PBGC employee to collect a debt owed by the employee to another Federal agency?**

(a) *Notice to a PBGC employee.* When PBGC receives proper certification of a debt owed by one of its employees, PBGC will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the date deductions from salary will begin, and the amount of such deductions. PBGC will begin deductions from the employee's pay at the next officially established pay interval.

(b) *Amount of deductions from a PBGC employee's salary.* The amount deducted under § 4903.21(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15 percent of the debtor's disposable pay so long as that amount does not exceed limitations imposed by 15 U.S.C. 1673. Deductions will continue until PBGC knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. *See* § 4903.13(g) (salary offset process).

(c) *When the debtor is no longer employed by PBGC—(1) Offset of final and subsequent payments.* If a PBGC employee retires or resigns or if his or her employment ends before collection of the debt is complete, PBGC will continue to offset, under 31 U.S.C. 3716, up to 100 percent of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by PBGC. *See* 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from PBGC before the debt is paid in full, PBGC will certify to the creditor agency the total amount of its collection. If PBGC

knows that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, PBGC will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 4903.10(c) of this part.

(3) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency—(1) Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, PBGC will notify the creditor agency and will certify the total amount of its collection on the debt. PBGC will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* PBGC will provide a hearing official upon the creditor agency's request with respect to a PBGC employee. *See* 5 CFR 550.1107(a).

## **PART 4905—APPEARANCES IN CERTAIN PROCEEDINGS**

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AUTHORITY: 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

## § 4905.1

SOURCE: 61 FR 34133, July 1, 1996, unless otherwise noted.

### § 4905.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules and procedures to be followed when a PBGC employee or former employee is requested or served with compulsory process to appear as a witness or produce documents in a proceeding in which the PBGC is not a party, if such appearance arises out of, or is related to, his or her employment with the PBGC. It provides a centralized decisionmaking mechanism for responding to such requests and compulsory process.

(b) *Scope.* (1) This part applies when, in a judicial, administrative, legislative, or other proceeding, a PBGC employee or former employee is requested or served with compulsory process to provide testimony concerning information acquired in the course of performing official duties or because of official status and/or to produce material acquired in the course of performing official duties or contained in PBGC files.

(2) This part does not apply to:

- (i) Proceedings in which the PBGC is a party;
- (ii) Congressional requests or subpoenas for testimony or documents; or
- (iii) Appearances by PBGC employees in proceedings that do not arise out of, or relate to, their employment with PBGC (e.g., outside activities that are engaged in consistent with applicable standards of ethical conduct).

### § 4905.2 Definitions.

For purposes of this part:

*Appearance* means testimony or production of documents or other material, including an affidavit, deposition, interrogatory, declaration, or other required written submission.

*Compulsory process* means any subpoena, order, or other demand of a court or other authority (e.g., an administrative agency or a state or local legislative body) for the appearance of a PBGC employee or former employee.

*Employee* means any officer or employee of the PBGC, including a special government employee.

*Proceeding* means any proceeding before any federal, state, or local court;

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federal, state, or local agency; state or local legislature; or other authority responsible for administering regulatory requirements or adjudicating disputes or controversies, including arbitration, mediation, and other similar proceedings.

*Special government employee* means an employee of the PBGC who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis (18 U.S.C. 202).

### § 4905.3 General.

No PBGC employee or former employee may appear in any proceeding to which this part applies to testify and/or produce documents or other material unless authorized under this part.

### § 4905.4 Appearances by PBGC employees.

(a) Whenever a PBGC employee or former employee is requested or served with compulsory process to appear in a proceeding to which this part applies, he or she will promptly notify the General Counsel.

(b) The General Counsel or his or her designee will authorize an appearance by a PBGC employee or former employee if, and to the extent, he or she determines that such appearance is in the interest of the PBGC.

(1) In determining whether an appearance is in the interest of the PBGC, the General Counsel or his or her designee will consider relevant factors, including:

- (i) What, if any, objective of the PBGC (and, where relevant, any federal agency, if the United States is a party) would be promoted by the appearance;
- (ii) Whether the appearance would unnecessarily interfere with the employee's official duties;
- (iii) Whether the appearance would result in the appearance of improperly favoring one litigant over another; and
- (iv) Whether the appearance is appropriate under applicable substantive and procedural rules.

(2) If the General Counsel or his or her designee concludes that compulsory process is essentially a request for PBGC record information, it will be treated as a request under the Freedom of Information Act, as amended, in accordance with part 4901 of this chapter, except to the extent that the Privacy Act of 1974, as amended, and part 4902 of this chapter govern disclosure of a record maintained on an individual.

(c) If, in response to compulsory process in a proceeding to which this part applies, the General Counsel or his or her designee has not authorized an appearance by the return date, the employee or former employee shall appear at the stated time and place (unless advised by the General Counsel or his or her designee that process either was not validly issued or served or has been withdrawn), accompanied by a PBGC attorney, produce a copy of this part of the regulations, and respectfully decline to provide any testimony or produce any documents or other material. When the demand is under consideration, the employee shall respectfully request that the court or other authority stay the demand pending the employee's receipt of instructions from the General Counsel.

**§ 4905.5 Requests for authenticated copies of PBGC records.**

The PBGC will grant requests for authenticated copies of PBGC records, for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure, for records that are to be disclosed pursuant to this part or part 4901 of this chapter. Appropriate fees will be charged for providing authenticated copies of PBGC records, in accordance with part 4901, subpart D, of this chapter.

**§ 4905.6 Penalty.**

A PBGC employee who testifies or produces documents or other material in violation of a provision of this part of the regulations shall be subject to disciplinary action.

**PART 4906 [RESERVED]**

**PART 4907—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION**

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AUTHORITY: 29 U.S.C. 794, 1302(b)(3).

SOURCE: 61 FR 34134, July 1, 1996, unless otherwise noted.

**§ 4907.101 Purpose.**

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

**§ 4907.102 Application.**

This part applies to all programs or activities conducted by the agency.

**§ 4907.103 Definitions.**

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking